

STATEMENT OF PURPOSE

RS19796

In 2000, the US Supreme Court, in *Troxel v. Granville*, overturned a Washington grandparent visitation statute and stated, both directly and indirectly, minimum constitutional standards for such statutes. The existing Idaho statute, §32719, violates one or more of those constitutional standards. Later, the Idaho Supreme Court, in *Leavitt v. Leavitt*, affirmed that a "clear and convincing" standard of proof was needed in the Idaho statute, at minimum, to pass constitutional muster.

This bill modifies §32719 to meet the highest possible constitutional standards for grandparent visitation. Until the US or Idaho Supreme Court, or both, address the issue in more detail, using any lesser standards risks having the statute held unconstitutional. Any such revisit of the statute, by either court, will be years in the future. Therefore, this bill takes a conservative approach to guarantee constitutionality of grandparent visitation in Idaho until there is a clear judicial statement that some lesser standard might be allowable.

This bill replaces the current section on grandparent visitation rights with a more clearly defined procedure for this process. The new section does four things: first, it defines the circumstances under which a grandparent or great-grandparent may petition for visitation rights. Second, it sets up the rebuttable presumption that a parent's decision with regards to grandparent visitation are in the child's best interest. Third, it sets the conditions under which that presumption may be rebutted. Finally, it sets up the conditions that constitute the child's best interests if the presumption is rebutted. This bill provides a clear process to establish visitation rights that take into account both the parents' and the grandparents' rights as well as the best interests of the child.

FISCAL NOTE

There is **no fiscal impact** to the General Fund or any level of government.

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